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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

314-633

No. 1027 73

MRS. NANNIE PYLE,

Petitioner,

vs.

TENNESSEE CENTRAL RAILWAY COMPANY.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TENNESSEE AND BRIEF IN SUPPORT THEREOF.

J. W. Stone,
Mae B. Stricklin,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 1027

MRS. NANNIE PYLE,

Petitioner,

vs.

TENNESSEE CENTRAL RAILWAY COMPANY.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Supreme Court of the United States:

The petition of Mrs. Nannie Pyle, respectfully shows to this Honorable Court, as follows:

A. Statement of the Case.

1. That on the 26th day of February 1938, the husband of petitioner, Pearson Pyle, was an employee of the respondent Tennessee Central Railway Company, and had been for about 19 years (R. 16).

The said Pearson Pyle held the position of yard foreman for the respondent Tennessee Central Railway Company at Emory Gap, Tennessee, and had held this position for about 14 years (R. 12).

When asked what were the duties of her husband as yard foreman, petitioner replied; "Well he looked after the engines and kept the yards clean, called out the train crews, notified the crews when their train was called to go out and was clerk in the office making out reports and time slips" (R. 12). When asked, on cross-examination if her deceased husband worked on engines and cars, petitioner answered; "no, he wasn't supposed to work on anything he was overseer to see it was done." In answer to another question as to whether he was just a foreman or overseer to see that the work was done, she answered; "Yes, the work that was to be done and he informed them when the engines were ready to go out." In answer to the next question being asked if it was part of Pyles duties to call the train crews, petitioner answered; "yes, he notified the crews when they were to go out" (R. 16). Petitioner's husband, Pearson Pyle, worked at the station at Emory Gap, Tennessee, all of the time during the entire 19 years that he worked for the respondent Railway Company (R. 16).

2. While engaged in the line of his duty in calling a crew to go out on train No. 81, on February 26th, 1938, Pearson Pyle, the husband of petitioner, was struck by a fast passenger train on the tracks of the C. N. O. & T. P. Railroad and was instantly or almost instantly killed (R. 12, 18, 19, 20).

Train No. 81, crew for which Pearson Pyle was calling at the time he was killed, was a freight train operated by respondent Railway Company and was made up at Emory Gap, Tennessee, and its destination was Nashville, Tennessee (R. 17, 21, 22, 23).

Train No. 81, as it was finally made up and went out from Emory Gap on the date that Pearson Pyle was killed, seems to have consisted of 13 cars, seven of which were loaded with Intra-state shipments or were empty and billed be-

tween Intra-state points. The other six cars were loaded with Interstate shipments but the handling of these cars is not shown. That is it is not shown whether they were kept in continuous transit or had been sidetracked for some length of time. That it is not shown when any of said six cars were received by the Tennessee Central Company at its Eastern Terminus at Emory Gap, Tennessee. Neither is it shown whether these cars moved under a through way bill or whether they had been billed from point of origin to some intermediate point and had been or were due to be rebilled to point of destination (R. 23).

Pearson Pyle had nothing to do with the making up of train No. 81, on the day that he was killed, in the yards at Emory Gap. The train was made up by the yard crew with the yard engine under the direction of F. G. Gardner, the agent and yard master, at Emory Gap. The only thing Pyle had to do in connection with train No. 81 was to call or notify the crew of the time fixed by Gardner for the train to go out (R. 24, 26, 27).

R. C. Harsh, the conductor on train No. 81 was not on duty and had done nothing toward the taking of the train out at the time that Pyle was killed (R. 24).

E. E. Smith, the Engineer for train No. 81 on that date who lived in Harriman, Tennessee, some two miles from Emory Gap, had been called by Pyle by telephone about ten minutes before Pyle was killed and did not arrive at Emory Gap until about 35 minutes after Pyle was killed and did not enter upon his duties until after that. It was the duty of the engineer after he arrived at Emory Gap to take the engine from the siding where it was stored and couple it up to the train (R. 21, 22, 24).

The fireman, that was to go out on No. 81 had not been notified. Pyle was on his way to call him at the time he was killed.

(3) The Tennessee Central Railway Company and the C. N. O. & T. P. Railway Company. Both use the same depot at Emory Gap, and have a common Agent and some other employees in common. The general direction of the track of both railroads at this point is North and South. The Depot stands entirely on the East side of all the tracks. Next to the depot come in order; the C. N. O. & T. P. North bound main, then the South bound main, then the interchange tract, then some side tracts of the Tennessee Central and then the Tennessee Central main line. Pyle was killed by a fast passenger train, No. 6, on the North bound main line of the C. N. O. & T. P., about opposite the freight room of the depot, while crossing the tracks to call the engineer for No. 81 (R. 17, 18, 19, 27).

(4) Your petitioner Nannie Pyle, as widow, of the deceased Pearson Pyle, and for the benefit of herself and her minor son Lucian Pyle, filed her petition in the Circuit Court of Roane County, Tennessee, to recover compensation from the defendant Tennessee Central Railway Company, on the 27th day of January, 1939, under the provision of the Workmen's Compensation Law of Tennessee (Code of Tennessee 1932 Title 14, Chapter 43, Sections 6851 to 6901, inclusive, and the amendments thereto) (R. 1-4).

Section 6856 of the Code reads in part as follows:

> "This law shall not apply to whom.—This chapter shall not apply to:
>
> "(a) Any common carrier doing an interstate business while engaged in interstate commerce. * * *"

The defendant Tennessee Central Railway Company filed its answer on May the 9th, 1939. The only pertinent part of the same being:

> "It admits that it is a corporation engaged in doing business as a common carrier by railroad, and that it has in its employ more than five persons, but it is

engaged as a common carrier doing an interstate business, and consequently said Workmen's Compensation Act (Section 6851 *et seq.* Code 1932) has no application to defendant" (R. 4-5).

This case was heard before the Honorable Pat Quinn, Judge, without the intervention of a jury, on September 29th, 1939 (R. 11). And was taken under advisement by the Court and held until December 9th, 1939 (R. 6). At which time a decree was entered in favor of your petitioner.

The said decree contained among other things the following:

> "And the statements of the respective parties made in open court, stating and agreeing that this is a compensation proceeding brought by Nannie Pyle, and the widow of Pearson Pyle, to recover compensation, for the benefit of herself and her minor son Lucian Pyle, under the Workmen's Compensation Law of Tennessee, and that there is only disputed question in this case to-wit:
>
> "Was the deceased husband, Pearson Pyle, and the defendant Railroad Company, in the duties that the deceased was performing at the time of the accident and his death, engaged in interstate commerce, or in work so closely associated with it as to be a part of it, so as to make the exclusion in said statute apply" (R. 6).

The defendant Railway Company filed its motion for a new trial on December the 9th, 1939, which was carried under advisement by the Court until January 22, 1940, when the same was overruled and the said Railway Company prayed and perfected its appeal to the Supreme Court of Tennessee (R. 8-11, 28).

The case was heard by the Supreme Court of Tennessee, Eastern Division, and on November the 23rd, 1940, the

Court handed down an opinion reversing and dismissing the case and decree was entered thereon on said date (R. 29, 33).

Your petitioner filed a petition to rehear which was overruled and denied on February the 7th, 1941 (R. 33).

A certified copy of the entire record of said cause in the Supreme Court of Tennessee is hereby furnished, attached to and made a part of this application and marked Exhibit A in compliance with the Rule of this Honorable Court.

Your petitioner is advised and believes that the said judgment of the Supreme Court of Tennessee is erroneous and that this Honorable Court should require said case to be certified to it for review and determination in conformity with the provisions of Title 28, Section 344 (Judicial Code, Section 237), of the United States Code. The Supreme Court of Tennessee, being the highest court of the State of Tennessee in which a decision could be had.

B. Questions Presented.

It is the contention of petitioner that Pearson Pyle was the Agent and Servant of the Tennessee Central Railway Company at the time he was killed and that the character of work in which he was engaged at the time determines the character of work or business in which his employer, The Tennessee Railway Company, was engaged at the time.

It is the further contention of petitioner that the said Pearson Pyle, at the time he was killed, was not engaged in interstate commerce, as the same defined by Title 45, Chapter 2, Section 51, of the United States Code with amendments thereto and which was in effect at the date of his death, February 26, 1938, and that the character of work or business of the employer being determined by the character of work in which the employee was engaged at the time, that, therefore, the said defendant, Tennessee Central Company, was not engaged in interstate commerce at the time of the accident in which Pyle was killed.

That, therefore, subsection (a) of Section 6856, of the Code of Tennessee, has no application in this case.

That the proper construction of said subsection (a) of said Section 6856 of the Code of Tennessee calls for a construction by the Court of Section 51, Chapter 2, Title 45, of the United States Code as to what is interstate commerce, or as to when a carrier is engaged in interstate commerce.

That the Supreme Court of the State of Tennessee has erroneously construed said Section, by its opinion in this case, wherein it held that both Pearson Pyle and the defendant Tennessee Central Railway Company were engaged in interstate commerce at the time of the accident in which Pearson Pyle was killed.

C. Reasons Relied On for Allowance of This Writ.

(1) The decision of said Supreme Court of Tennessee misconstrues Section 51, Chapter 2, Title 28, of the United States Code and is in conflict with the holdings of this Court construing said statute.

(2) The decision of said Supreme Court of Tennessee grants the defendant Railway Company a privilege or immunity under said Section 51, Title 45, of the United States Code and under subsection (a) of Section 6856, of the Code of Tennessee to which it is not entitled under the decisions of this Court construing said United States Statutes and other similar State Statutes.

(3) The decision of the said Supreme Court of Tennessee is in conflict with the great weight of authority of this and other courts construing said statutes and other similar statutes.

Wherefore, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal

of this Court directed to the Supreme Court of Tennessee, Eastern Division, commanding said court to certify and send to this Court on a day certain to be designated a full and complete transcript of the record and all proceedings of the said Supreme Court of Tennessee, in said cause, entitled Tennessee Central Railway Company v. Mrs. Nannie Pyle, No. 2. From Roane County, to the end that the said cause may be reviewed and determined by this Court as provided by Section 237 of the Judicial Code (Title 28, Paragraph 344, Subsection (b) U. S. Code), or that your petitioner may have such other or further relief or remedy in the premises as this Court may deem appropriate and in conformity with the provisions of the Judicial Code (U. S. Code Title 28) and that said judgment of said Supreme Court of Tennessee in said case and every part thereof may be reversed by this Honorable Court.

MRS. NANNIE PYLE,
By J. W. STONE,
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MAE R. STRICKLIN,
Attorney for Petitioner.